IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 12 OF 2003

1. Shri Nilesh V. Gaonkar,
   Temporary stall, Opp.
   Loja Sacardande,
   Municipal Market,
   Panaji.

2. Shri Jayachand R. Doshi,
   C/o M/s Ramchand Kevalchand
   Doshi, P.O. Box 81,
   Station Road, Margao, Goa.

3. Shri Bharat R. Doshi,
   C/o M/s Ramchand Kevalchand
   Doshi, P.O.Box 81,
   Station Road, Margao, Goa. ... Petitioners.

versus

1. State(through Smt. Iva
   Fernandes, Food Inspector,
   Directorate of Food & Drugs
   Administration, Panaji,Goa). ... Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Dessai, Advocate for the Applicants.

Ms. Winnie Coutinho, Additional Public Prosecutor for the Respondent absent.

CORAM: P. V. HARDAS, J.

DATED: 24TH NOVEMBER, 2003.

ORAL JUDGMENT

This Revision has been filed against the

Order dated 6th March, 2002, rendered by the Judicial Magistrate First Class, Panaji, in Criminal Case No.45/OA/98/C, dismissing the application for discharging/recalling of process filed by Original Accused Nos.1, 2 and 3. After arguing for some time, Mr. S. D. Lotlikar, learned Senior Counsel appearing for the Applicants states that the grounds raised in the application before the learned Trial Court were not complete in the sense that there are two additional grounds which can be raised in favour of the Applicants for seeking recalling of the process and consequently their discharge in the said Criminal Case. Since these grounds were not raised before the learned Trial Court, according to the learned Senior Counsel appearing for the Applicants, he would not be entitled to raise these grounds in the present revision. The learned Senior Counsel appearing for the Applicants, therefore, seeks leave of this Court to withdraw this Criminal Revision Application with liberty to file an application for recalling of the process/discharge of the Applicants on grounds other than the grounds which fell for consideration before the learned Trial Court. The Accused has a right to apply for either recalling of the process or seek his discharge on grounds other than the grounds which had been adjudicated by the Court below.

2. In the result, therefore, this Criminal Revision Application is dismissed as withdrawn and though it is needless, liberty is granted to the Applicants to file an application for recall of the process/discharge on the grounds other than the grounds which were urged before the learned Trial Court and which had been adjudicated upon by the learned Trial Court in the Order impugned in the present revision.

3. Criminal Revision Application No. 12 of 2003 is dismissed accordingly with the aforesaid liberty.

P. V. HARDAS, J.

RD.